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son, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.'

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'The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But between the useful business which may be regulated and the vicious business which can be prohibited lie many nonuseful occupations which may or may not be harmful to the public, according to local conditions or the manner in which they are conducted' (*Murphy v. California*, 225 U. S. 623, 628, 56 L. Ed. 1229, 1232, 41 L. R. A., N. S., 153, 32 Sup. Ct. Rep. 697)."

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**Newspapers—Revocation of Mailing Privilege—Violation of Espionage Act.**—In *Jeffersonian Publishing Co. v. West*, decided recently by the U. S. District Court for the Southern District of Georgia, the validity of the Espionage Act of Congress of June 15, 1917, was sustained by Judge Speer. Certain articles appearing in a publication issued by the plaintiff were held violative of the act, and the court sustained the action of the Postmaster General in excluding the publication from the mails. Post Master General Burleson ordered the second-class mailing privilege of "The Jeffersonian" withdrawn and an injunction was asked to prevent compliance with the order. The court refused a preliminary injunction but granted a rule to show cause why the injunction should not issue as requested. At this hearing the court decided that the petitioner was entitled to specific information as to the features of "The Jeffersonian" deemed so unmailable as to induce the conclusion that the publication was not a newspaper in the meaning of the law conferring the second-class privilege. This information having been furnished the case is stated and concluded as follows: The question is presented, Do the facts and the determination of the Postmaster General demand or justify a court of the United States in the interference here sought with an administrative branch of government?

In the affidavit of the Postmaster General, after the specification required by the court of the passages in "The Jeffersonian" held by him to be unmailable, there appears the following statement:

"Deponent further says that in his judgment, in their entirety, the issues (of 'The Jeffersonian') evince a purpose and intent on the part of the publisher to willfully make or convey false reports or false statements with intent to interfere with the operation and success of the military or naval forces of the United States, to willfully obstruct the recruiting or enlistment service of the United States to the injury of the service, . . . and that the circulation of such matter in causing antagonism and resistance among the people to the conduct of the war with respect to enlistments, execution of the draft and the sale of bonds to raise revenue to carry on the war."

The Postmaster General further states under the sanction of his oath that he is advised and believes that there is an organized propaganda which has inflamed a large body of people to such an extent that it constitutes in effect the advocacy of treason, insurrection and forcible resistance to the laws of the United States. Upon such information, he states that this has been actually threatened, and that prominent among the publications thus engaged is "The Jeffersonian"; that the matter it produces to this end in contemplation of the Espionage Act, is nonmailable. After due and thorough consideration, deponent so decided, but prior to his ruling that the issue of June 28, 1917, was nonmailable, the paper was submitted to the Attorney General of the United States, and deponent was advised by the Attorney General that the paper was in violation of section 3 of title 1 of the Espionage Act.

For the same reason, and because it contained matter of the same nonmailable description, the Postmaster General, after examination, caused the postmaster at Thomason to be advised that the issue of August 16th was also unmailable. Thus it will be seen that the court is advised of the concurrent opinion of two members of the cabinet, the chief of the Post Office Department and the chief of the law department of the government, in justification of the action of which plaintiff complains.

A supreme measure of legislation enacted by Congress for the successful prosecution of the great war in which the country is engaged, termed the Espionage Act, in title 1, section 3, declares that, "whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies; and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny of duty in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States to the injury of the service of the United States, shall be punished by a fine, etc."

In connection with this, section 1 of title 12 of the same act must be considered. This declares that "every letter, newspaper, etc., in

violation of any of the provisions of this act is hereby declared to be nonmailable, and shall not be offered in the mails or delivered from any post office nor by any carrier." The light afforded by these sections of a valid and vital law, shone upon the pages of "The Jeffersonian" when they were under the scrutiny of the members of the President's Cabinet. Congress had declared war. Thousands of the elite of the American army were on the soil of France. At any moment the crash of their rifle fire and the thunders of their artillery in the vindication and defense of human liberty might be heard. American men-of-war manned by Americans were swiftly cleaving the waters forbidden by the enemy to our commerce, questing every billow for his lurking and deadly craft. By the thousands the gallant youth of every American State were rallying to the flag. In the vast oversubscription of the liberty bonds our people had proven that in the common cause they will be as lavish of their treasure as of their blood. With the utmost nobility of soul, with the self-sacrificial spirit of woman, in the humane Red Cross and similar organizations, our country's daughters were no whit behind her sons.

At this juncture of the nation's life, the Postmaster General and the Attorney General have discovered in the plaintiff's publication which the Government through its mail was distributing to its people, such passages as this, taken from the issue of June 28th:

"Men conscripted to go to Europe are virtually condemned to death, and everybody knows it.

"President Wilson admitted as much in his Flag Day address. . . . *Why is your boy condemned to die in Europe?*"

Again, in the issue of July 19th, is a statement aimed at the Chief Magistrate of the United States. That it is false, that it was intended to interfere with the operation or success of our forces; that it was an attempt to cause insubordination, disloyalty, mutiny or refusal of duty by them, the Postmaster General might well conclude.

"Does he, the President, not know that the Conscription Act, forcing citizens out of the Union to die in Belgium and France is every bit as lawless as the action of the Phelps Dodge Copper Company in forcing these one thousand one hundred (1,100) miners out of Arizona? What are 1,100 miners to six hundred and eighty-five thousand (685,000) conscripts whom our Caesar has condemned to death in 'foreign fields of blood'?"

Nor is such reference as the following, to the Commander-in-Chief of the Army and Navy of the United States, made in time of war, deterrent to insubordination, disloyalty, mutiny or refusal of duty:

"Are we—like the sow returning to her wallow and the dog to his vomit—to go back to the medievalism of personal rule—a Pope's word ruling the church and a king's word ruling the State?

"Why not call Woodrow Wilson by the name of king, or kaiser,

or czar, if the constitution is to be treated as the kaiser treated the Belgian treaty?

"The kaiser did not swear to support the Belgian treaty. Woodrow Wilson did swear to support the constitution.

"And now, within six months after taking that solemn and public oath, the congressmen and president who did so are treating the constitution exactly as the kaiser treated the Belgium treaty."

Nor does Congress escape. On page 4 of the issue of July 19th, is printed the vote of the House on the question to create a national army. This, under the title, "these are the Representatives in Congress, Lower House, who confiscated the liberty and the lives of your sons."

A more direct, but not more effective, effort to obstruct the recruiting or enlistment service of the United States appears on page 7 of the issue of July 26, 1917.

"I advise (prints the editor of 'The Jeffersonian') the conscripts to await the decision of the United States Supreme Court, and not to be clubbed by the fact of conscription into enlistment. Once you volunteer, and sign up, you can be sent anywhere, and the law can't help you."

Equally but not more unmailable in contemplation of the act of Congress above quoted is the issue of August 16th. In the affidavit before the court the Postmaster General, as we have seen, after charging the existence of an organized propaganda to discredit and handicap the government in the prosecution of the war, declared that such matter is in violation of section 3 of title 1 and sections 1 and 2 of title 12 of the Espionage Act and is nonmailable. That for these reasons, the publication is not a newspaper or other periodical publication within the meaning of the laws of the United States governing mailable matter of the second class, and the ~~deponent~~ so decided after due and thorough consideration of the matters and things stated herein." In this conclusion I find that he was fully justified.

In such crises in Lacedaemon, the Spartan mother, when her son went forth to battle, was accustomed to exclaim, "return on your shield or with it." How dissimilar, how sordid is the cowardice "The Jeffersonian" would encourage.

"What about a carload of German soap made out of our boy?

"What about manuring German fields with our bravest youth, and fattening German hogs on the choicest selection from American manhood?

"'I raised my boy to be a soldier,' says the song, but did mother raise him to be pig feed?"

Had the Postmaster General longer permitted the use of the great postal system which he controls for the dissemination of such poison, it would have been to forego the opportunity to serve his country afforded by his lofty station.

There is, moreover, an additional consideration of the weightiest character which obliges the denial of such an injunction as is here sought. An appeal is made to an American court of equity to oblige the postal authorities of our country to contribute its mailing facilities for the furtherance and success of a propaganda against the nation as distinct as it is truculent and dangerous. Under the familiar rule in equity, such an appeal is addressed largely to the discretion of the court. It is to be determined by the conscience of the chancellor, and always with proper regard to the public welfare. This imports the country's welfare, and a party seeking this extraordinary remedy under a rule equally familiar, must come into court with clean hands. Can one be said to come with clean hands when the policy, methods and efforts he would maintain may cause his hands to be imbrued in the blood of the demoralized and defeated armies of his countrymen? If, by such propaganda American soldiers may be convinced that they are the victims of lawless and unconstitutional oppression, vain indeed will be the efforts to make their deeds rival the glowing traditions of their hero strain. On the contrary, the world will behold America's degradation and shame, the disintegration under fire of our line of battle, the inglorious fight of our defenders, like the recent debacle of the Russian army, brought about by methods much the same, the ultimate conquest of our country, the destruction of its institutions and the perishing of popular government on earth.

The preliminary injunction is denied.

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**Wills—Construction—Legacy of Corporate Stock General or Specific.**—Whether a bequest of corporate stock is to be construed as general or specific depends upon the intention of the testator. In a recent case (*Re Will of Miller*, reported in *New York Law Journal* for August 8, 1917) the New York Court of Appeals construed a bequest whereby testator gave to each of his relatives and employees named a certain number of shares in a manufacturing company established and built up by him, the aggregate being the whole number of shares owned by him, and directed that at least three of such legatees should be present when the box containing the stock should be opened. He further directed that all taxes, expenses of administration, etc., should be paid out of the proceeds of his other property "to the end that the beneficiaries may receive their legacies without any deduction." In holding the bequests specific the Court of Appeals said in part:

James T. Miller died at Rochester, N. Y., August 19, 1913, leaving a last will and testament wherein he bequeathed 2,024 shares of the capital stock of the Kee Lox Manufacturing Company of Rochester, in various amounts, to thirteen relatives and seven employees of the company.